

Royal State Center
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Honolulu, Hawaii 96813
(808) 537-3151

MUTUAL BENEFIT ASSOCIATION OF HAWAII

*Transmitted via Facsimile
Original via U.S. Mail*

October 25, 2002

To: Davis Yogi
Rules Committee
Hawaii Employer-Union Health Benefits Trust Fund

From: Melvin Higa, Senior Vice President

Subject: Response No. 4 to Your Letter Dated October 9, 2002
Re: Proposed Rules of the Hawaii Employer-Union Health Benefits Trust Fund

As noted in my Response No. 3, I was not able to perform a complete review nor prepare and submit comments on much of the proposed rules being recommended for board approval and adoption. This submission serves to provide additional comments to those that were previously submitted by the closing date for the committee's and/or board's further consideration albeit subsequent to the board imposed deadline.

Sections 87A -24(8), 31(a) & 31(b), HRS permits the board to establish health benefits and long-term care benefits plan rates that include administrative and other expenses necessary to effectuate the purpose of the fund, to pay administrative and other expenses of the fund and use fund monies to stabilize health and other benefit plan rates; provided that the approval of the governor and legislature shall be necessary to fund administrative and other expenses necessary to effectuate these purposes.

Board Administrative Rules are clearly necessary and required for the implementation and administration of these statute provisions. The proposed rules being recommended for approval and adoption, however, do not provide rules on and for this matter. RFP 03-001 evidences the lack of proposed rules and the necessity for such rules to be issued. The RFP for group life insurance benefits calls for using part of the statute provided employer contributions for retirees' life benefits for administrative and other expenses, contrary to statute. Furthermore, there are no rules (proposed) upon which the amount of dollars for administrative and other expenses is firstly to be determined and secondly, how said expenses are to be allocated between and amongst retiree and active employee-beneficiary categories and the various benefits plans. These rules need also address the quandary of establishing health and long-term care benefits plan rates that include such administrative and other expenses, subject to the approval of the governor and legislature authorizing the board to use such monies for administrative and other expenses.

Such Administrative Rules were not only necessary and required before RFPs 03-001 were approved and issued, but belated as it is need be adopted before beginning the process of evaluating proposals submitted in response to RFPs 03-001 and awarding of any contracts thereto.

Section 87A-9, HRS provides that the attorney general shall serve as legal adviser to the board and shall provide legal representation for the Hawaii employer-union health benefits trust fund.

Davis Yogi
October 25, 2002
Page 2

Great dissatisfaction has been voiced by trustees on this matter, particularly union-trustees. Therefore, it is suggested that rules be provided for the contracting of legal counsel other than the attorney general. And, further, those monies for that purpose should be included in the proposed operating budget.

Section 87A-24(4), HRS empowers the board to appoint, and at the pleasure dismiss, an administrator and other fund staff. There may be necessity for the board to have rules for implementation and administration of these powers, as it appears that no existing public employer rules on employment apply.

Section 87A-32(a)(2) and other sections provides that public employer contributions, which shall be used toward the payment of costs of a health benefits plan, shall not exceed the actual cost of a health benefits plan. Rules are required for the implementation and administration of this matter. The lack of Hawaii Public Employees Health Fund Rules addressing this matter has contributed to and caused lengthy and costly legal battles. Specifically, note that employer contributions are used toward the payment of "costs" of a health benefits plan, while the not to exceed portion of the provision uses the term "actual cost" of a health benefits plan. Note further, that an employee contribution is the difference between the monthly "charge" of the health benefits plans selected by the employee-beneficiary and the contribution made by the employer. Professionals in the field have long disagreed on interpreting and applying these terms in the context contained in the statute. Therefore, it is not prudent for the board to not provide a clear definition(s) of said term(s) for implementation and administration of this matter.

Section 1.07(d)(5) may not be consistent with applicable laws requiring more than a majority vote. Therefore, the board should seek guidance from the courts or the respective authorities having jurisdiction over applicable laws requiring more than a majority vote.

Proposed Rules Section 2.0 is deficient. HRS, Section 87A-26 Rules; policies, standards, and procedures in part provides: (a) The board may adopt rules for the purposes of this chapter..., and that **Rule-making procedures shall be adopted by the board and shall minimally provide for:**

- (1) Consultation with employers and affected employee organizations with regard to proposed rules;
- (2) **Adoption of rules at open meetings that permit the attendance of any interested persons;**
- (3) Approval of rules by the governor; and
- (4) Filing of rules with the lieutenant governor.

Adoption of rules at open meetings that permit the attendance of any interested persons. Proposed Administrative Rules, 2.0 Administrative Procedures, 2.01 Adoption, Amendment or Repeal of Rules, provides in subsection (e): After the consultation provided for in subsection (d), the

Davis Yogi
October 25, 2002
Page 3

proposed rule change shall be considered for adoption at an open meeting of the board that permits the attendance of interested persons.

Proposed rules Section 2.01(e) is deficient. The proposed rules merely states that contained in the statute, and does not provide for the implementation and administration for the conduct of such an open meeting of the board that permits the attendance of interested persons. For example, the proposed rule fail to provide for notification of interested persons of the meeting, providing interested persons access to the proposed rule being considered for adoption, and of the interested persons in attendance reasonable time to review material, and right to comment and make input.

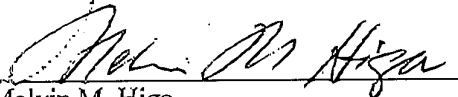
Section 3.03 is inappropriate and improper. Please see attachment in support of this assertion. Attachments: (1) memo dated September 25, 2002; second paragraph; (2) memo dated October 18, 2002; page 2, first paragraph. Revisions to this section will require revising section 4.01 or adding a section for declination for life insurance benefit coverage.

In the event that the state comptroller is not the proper authority over other state government public employers as defined under HRS, Chapter 89, proposed rules Section 4.01(b) will need be revised to include the proper authorities.

Section 4.02(c) should be revised to include reason(s) for the rejection of any enrollment application.

Is it intended under Section 4.03 (a) that both of the dual coverage enrollments be cancelled? If so, that is not acceptable and if not, the rule need be revised to provide for implementation and administration of canceling such dual coverage enrollments. Often, these dual coverage enrollments are the result of domestic family disputes. The rules need to provide the basis used by fund to determine which one of the dual coverage enrollments is to be cancelled.

Thank you for the opportunity to submit comments.


Melvin M. Higa

Attachments

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MUTUAL BENEFIT ASSOCIATION OF HAWAII

September 25, 2002

TO: Rules Committee
Hawaii Employer-Union Health Benefits Trust Fund

FROM: Melvin Higa, Senior Vice President

SUBJECT: Re: Comments to Draft 9/9/02 Version 9/20/02, Administrative Rules

References to "bargaining unit" and "appropriate bargaining unit" should be consistent with the terminology used under Chapter 89, HRS. The terminology used there under is "appropriate bargaining unit." Reference(s) to "United States" should be "United States of America." Reference to both "exclusive employee organizations" and "exclusive representatives" is confusing and likely improper. The proper reference should be "exclusive representatives", to be consistent with Chapter 89, HRS.


A Rule providing that eligible employees who do not reject life insurance coverage in writing be covered by the group insurance policy should be included in the Proposed Rules, as such is required by statute. To that lawful respect, Proposed Rules 3.03 and 4.01 are affected and questioned. Proposed Rule 3.03 is not consistent with law and therefore is misleading. The inconsistencies are with regards to compliance with age, underwriting and contribution requirements. Proposed Rule 4.04 mandates filing an enrollment application to enroll in any benefits plan (including life insurance), which is inconsistent with Chapter 431, HRS, requiring a written rejection.

Act 88, SLH 2001 provides that the Hawaii employer-union health benefits trust fund may develop and issue rules, which shall become effective on July 1, 2003. This Act 88 provision makes very clear that the effective date for the Proposed Rules be July 1, 2003. Accordingly, an Effective Date section should be included in the Proposed Rules, with the Rules being effective on July 1, 2003. Furthermore, Proposed Rule 2.01(f) is not lawful. That is because section 87A-26 of the Hawaii Revised Statutes does not codify all of the provisions contained in Act 88, SLH 2001, including that relating to effective date of new rules. Further, both new and proposed rule changes, not only proposed rule changes as being proposed, need comply with lawful requirements.

We believe and assert that the Proposed Rules need also conform to equal employment opportunity laws. As such, Rules should not and cannot be crafted in manner that constitute a disparate or discriminatory employment practice. We also note that eligibility criteria being proposed continue to be inconsistent with statute (see our previous communications dated September 17, 2002).

4.13(b) may need to be clarified, wherein participating or otherwise being a party to filing of fraudulent claims is included as reason for termination of enrollments.

Thank you for allowing us the opportunity to provide these comments and your attention and consideration to this matter.



Melvin M. Higa

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MUTUAL BENEFIT ASSOCIATION OF HAWAII

Fax Transmittal
Original via U.S. Mail

October 18, 2002

To: Davis Yogi
Rules Committee
Hawaii Employer-Union Health Benefits Trust Fund

From: Melvin Higa, Senior Vice President

Subject: Response to Your Letter Dated October 9, 2002 Re: Proposed Rules of the
Hawaii Employer-Union Health Benefits Trust Fund

Your letter dated October 9, 2002 is in reply to comments contained in my September 25, 2002, memorandum concerning the proposed rules of the Hawaii Employer-Union Health Benefits Trust Fund. My response to your letter follows.

Thank you for informing me on those revisions made to proposed rules provisions that the committee found necessary or otherwise appropriate. Also, thank you for informing me on those revisions that the committee determined to be unnecessary or otherwise inappropriate, after having given consideration to the comments that I submitted. Finally, thank you for allowing that I provide comment to specific issues for the committee's further consideration.

On considering my submitting additional comments on specific issues, I found a common thread that run throughout the Fund's and including the Rules, Benefits and Administrative Committees conduct of business. The common thread is the absence of Board and/or the Board's Committees having performed, by assignment or otherwise, upfront search for and identification of laws that apply or affect the business conduct of the Fund. Said common thread is one of the primary cause giving rise to self-created deficiencies, inefficiencies and substantive legal issues, which is aggravated by Trustees not reading and listening to comment and input (messages) offered and made. This particular item is mentioned because it is substantive, in nature, to my previous communications and this response.

The Committee's determination reached and decision made as contained in item number 3 should be reconsidered. In reconsidering this matter, further consideration should be given to use of term "affected employee organization", rather than retaining term "exclusive employee organization." This suggestion is made, based on the rationale presented in your response and alignment thereof to the statute, which use the term "affected employee organization."

Item number 4. My memo clearly refers to Chapter 431, HRS (see last sentence of second paragraph). As your letter points out, the Committee's review could find no such requirement (as set forth in paragraph two of my memo) on review of Chapter 87A, HRS. That is because I referenced Chapter 431 and not Chapter 87A. You ask for further comment. Please see Sections 431:10D-201 & 202, and for additional requirements that apply more specifically to the Benefits Committee in respect to RFPs 03-001, subsections 213, 214 & 215 of Section 431:10D, HRS. These statute provisions are clear and self-explanatory and provide the complete description of requirements that I believe apply, and that you requested I provide. Also, please see my communications dated October 15, 2002. It provides much additional and substantive details relating to this matter.

Item number 7. Please see my memo dated October 15, 2002, as a partial response. As applies to full-time students I gather that the Committee discussed issue on propriety of creating new law by rule and further, represents and certifies that Committee discussed and determined that similarly situated dependents (dependent child/children of employee-beneficiaries), except that said similarly situated dependents are not "full-time students," does not result in or otherwise constitute a disparate/discriminatory employment practice. I am certain that this matter crossed your mind, but I'm uncertain whether you informed the Committee and/or legal counsel. My reason for being certain of your personal knowledge has been previously communicated. In addition, I understand and believe that you were the "architect" and "engineer" for getting around having to define "child" based on and reliance on age, and use of the "dependent" provision to circumvent the inherent and obvious ramification to using the generally accepted legal definition (majority age of either 18 or 21) for adult, as versus child.

Again, you convey that the Rules Committee thoroughly discussed all of the issues and proposed changes received. I, again, respond that said conveyance ring hollow. You have now asked that I provide specifics (re disparate/discriminatory employment practices). You and the Committee must be able to recall that Trustee Uwayne, prior to his resignation, requested that the Committee consider providing that health benefits eligibility to include "Reciprocal Beneficiaries" and other employee-beneficiaries who are not required to register as being subject to sexual orientation or under conventional marital status and place same on the Committee's meeting agenda. Mr. Uwayne made said request several times, including at Board meetings and inappropriately therein making certain insinuations and apologizing for same, but did also cite that discriminatory practices law likely applies (government not exempted from laws). Given this background and your conveyance that committee has done its due diligence, I ask for copy of legal opinion or other written evidence that Committee thoroughly discussed Mr. Uwayne's concern. At very minimum, the Committee should have found that Section 378, HRS applies to heart of Mr. Uwayne's concern and consulted with the entity empowered to interpret and enforce those unlawful discriminatory employment practices provisions.

It is the Board's and Committee's duty and responsibility to do their "home work" first, before seeking public comment and input. Therefore, it is not appropriate that you suggest and request that I submit all my findings and show the Committee how the

proposed rules are inconsistent with law and otherwise deficient, and do so by October 21, 2002. Such substantive review, I submit, is the responsibility of the Committee and Board to have performed, and pay for. The lack of time, specialized professional resources and money is not a valid excuse, for it is the Board that has set forth the path for this journey with full knowledge of woefully inadequate funding to buy necessary resources to get the job done, the timing for implementation of benefits plan not being in alignment with the collective bargaining process for determining employer contributions for health and life benefits plans premium costs, the timing of legislature approving the shifting of Fund's health benefits administrative and other expenses to employee-beneficiaries, among many other conditions and barriers created by and under Act 88, SLH 2001.

The situation, however, if left untold and allowed to continue be covered-up, will cost Hawaii hundreds of millions of dollars. A terrible waste of real money. Perhaps, investing more time, that can be averted. Maybe not, as your time, the Committee's time and the Board's (real, quality, genuine effort not simply going through the motion - rubber stamping) time is required.

You closed your letter with the enclosing of proposed final draft of the Administrative Rules that the Rules Committee approved on October 3, 2002, "after thorough discussions of all of the issues and proposed changes received both in writing and verbally from public employers, employee organizations and the public"; and, stated that if I have comments or suggestions about this proposed final draft to submit them in writing. I repeat my previous comments. I also add that the latest text format version you enclosed is 26 pages, as compared to some 60 pages under the comparative chart format version that is currently posted on your Website. To test assertions I have made from the outset, I reviewed Section 1.02 Definitions of the Proposed Final Draft w/Additional Revisions version 10/3/02, that you enclosed. Section 1.02 represents approximately two (2) of the total twenty six (26) pages. My comments on and for these two (2) pages only are as follows:

1.02 Definitions:

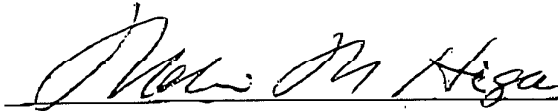
- "Carrier" shall have the meaning as in statute (per proposed rules) -- is it realized that the definition in statute does not include and apply to group life insurance benefits and if so, does the omission of group life insurance benefits result in problems or concerns on applying the term carrier within provisions of the proposed rules?
- "Contributions" is not set forth in Section 87A-1 as referenced in the proposed rule. The proposed rules referenced section uses and defines the term in singular, "Contribution", rather than plural "Contributions."
- Both "Dependent-beneficiary" and "Employee-beneficiary" shall mean the persons described in Rule 3.01 of the proposed rules as being eligible for coverage in health benefit plans offered or sponsored by the Fund as dependent-beneficiaries and employee-beneficiaries, respectively. These definitions are not applicable to and do not apply to any benefits plan other than "health benefit

plans." The proposed rules provide that the term "Health benefit plan" shall have the same meaning as set forth in Section 87A-1, HRS. Therein, the term is defined and means "A group insurance contract or service agreement that may include medical, hospital, surgical prescribed drugs, vision, and dental services..." It does not include any other benefits such as life, long-term care, etc. It appears that the proposed rules present and creates a vast void. Furthermore, Rule 3.01(b) Dependent-beneficiaries does not provide that "reciprocal-beneficiaries" and others who have not married and without marital status are eligible for coverage, as required by Section 378, HRS; and, does not require employee-beneficiary to provide the Fund with written proof reasonably satisfactory to the Fund of the unmarried status and living with the employee-beneficiary's conditions applicable to full-time students, as required by statute and further, a provision that creates law without authority and is likely to constitute and result in a disparate/discriminatory employment practice.

- Meaning of "Employer" or "public employer" is proposed to be that as set forth in Section 89-2, HRS. That may or may not bring forth concerns. Review and analysis of provisions concerning and referring to term "employer" or "public employer" is required to determine whether there are or may be concern. To conduct such review, "word-search" would be of great help. However, Website does not provide these proposed rules in text format to allow application and use of "word-search" technology. Reference to Section 89-2, HRS, appears to recognize that removal of the word "government" from within the definition of the word "Employee" requires damage control. The question is whether the proposed fix does in fact provide the necessary and required repair. The proposed rules definition for "Full-time student" should be expanded to include student being unmarried and living with employee-beneficiary parent (comment here does not mean that I agree with the proposal, as I do not).
- "Non-Fund benefit plan" should be reviewed as to application, to assure non-interference with collective bargaining. Review of provisions affected may raise other issues.
- The proposed rules defining "Part-time, temporary, and seasonal or casual employee" is outrageous. It is a clever, underhanded attempt to circumvent the law. See my October 15, 2002, letter. The proposed definition is absolutely and clearly inconsistent with the definition provided in the statute. It is crafted in a manner to appear to be consistent with the statute, but is designed to disqualify thousand of workers that the statute clearly makes eligible for health and life insurance benefits. The Committee's purposeful substitution of the word "or" for "and" is the trick. This is outright fraud and stealing of employee rights to health and life insurance benefits from those least able to detect Trustees thievery and put up a challenge.
- There is no definition for "Periodic change" that the proposed rules say is set forth in Section 87A-1, HRS. The most likely term is "Periodic charge."
- Similarly, the term "Qualified beneficiary" is "Qualified-beneficiary" as provided in the referenced Section 87A-1, HRS.
- The proposed rules provide that the term "Employee" shall have the meaning as set forth in Section 87A-1, HRS. However, the proposed rules fail to provide

eligibility criteria addressing the deletion of the word "government" from the core part of the statute's definition. "Employee" under Chapter 87A-1 means an employee or officer of the State and county, and no longer means an employee or officer of the state or county *government* that is provided under Chapter 87. One provision that is clear, under the subsections following there under, concerns the employee, officer or elective officer of the legislature. These persons are clearly made eligible, and the elective officers of the legislature are eligible upon election and no longer required to have served for at least ten years before becoming or being eligible, as currently required under Chapter 87. The 2001 legislature made that clear, while making the eligibility of many others ambiguous. The proposed rules need be further reviewed to assure that there is proper alignment of employees eligibility to that with proposed definition of "Employer" or "Public Employer" as defined under Chapter 89, HRS.

The foregoing is limited to my review of Section 1.02. I submit these review findings as my comments, as testimony in support of my assertion that the Proposed Rules is not fit for soliciting public comment and input, and that the Rules Committee is derelict in its duty to recommend Board approval/adoption of such poorly crafted and drafted Rules.

A handwritten signature in black ink, appearing to read "Peter M. Higa", is written over a horizontal line.